

Banking Cases (Monthly)

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**DEPARTMENTAL INQUIRIES AND CRIMINAL TRIALS: A
CRITICAL STUDY IN THE LIGHT OF SUPREME COURT'S
DECISION IN STATE BANK OF BIKANER & JAIPUR'S CASE***

—Prof. (Dr) Mukund Sarda**

The Supreme Court has laid down norms for the interference by the Courts in the sphere of departmental inquiries.¹ They may be stated as follows:

- (1) The Courts will not act as an appellate Court and re-assess the evidence in domestic inquiries, nor interfere on the ground that another view is possible on the material on record;
- (2) If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of evidence or the reliable nature of the evidence will not be grounds for interference with the findings in departmental inquiries;
- (3) In cases, where the findings are based on no evidence or when they are clearly perverse, the Courts will interfere;
- (4) The test to find perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record;
- (5) Courts will, however, interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, *mala fide* or based on extraneous considerations;²
- (6) Whether a punishment of termination of service imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct will be an important and relevant factor;³
- (7) Vague assumption that the bank employee must have acted *bona fide* in an increasing customer – friendly atmosphere cannot interfere with the finding of guilt in a domestic inquiry;⁴

* AIR 2011 SC P.1931.

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1. *Supra* Para 6.

2. See also the decisions in cases *B.C. Chaturvedi v. Union of India*, AIR 1966 SC 484, *Union of India v. G.Gunayathan*, AIR 1997 SC 3387; *Bank of India v. Dugala Satyanarayana*, AIR 1999 SC 2407; and *High Court of Judicature at Bombay v. Shashikant S. Patil*, AIR 2000 SC 22.

3. *Supra* Para 7.

4. *Supra* Para 8.

- a (8) Subsequent acquittal of the employee in the criminal trial will not in any way render a completed disciplinary proceeding invalid nor affect the validity of finding of guilt or consequential punishment, as the standard of proof required in criminal proceedings being different from the standard of proof required in departmental proceedings, the same charges and evidence may lead to different results in two proceedings,⁵ such as finding of guilt in departmental proceedings and acquittal in the criminal proceedings;
- b (9) The findings by the Criminal Court will have no effect on previously concluded domestic inquiry;
- c (10) An employee who allows the findings in the inquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently the criminal Court has acquitted him; and
- d (11) Where there is no involvement either of misappropriation or fraudulent conduct and other circumstances of the case, punishment by way of dismissal can be substituted by compulsory retirement which does not involve reinstatement and payment of back wages.⁶

It is worthwhile to refer to Section 354(1)(d) and Section 232 of Criminal Procedure Code, which states thus:

- e *Section 354(1)(d)*—"if it be a judgment of acquittal, shall state the offences which the accused is charged and that he be set at liberty."
- f *Section 232*—"if after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence...., the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal."

The judgment of acquittal reinforces fully the innocence of the accused. No appeal was filed against acquittal as a result the innocence of accused gets fully and conclusively confirmed.

- g The main charge against the delinquent employee Mr. Nemi Chand Nalwaya, as a clerk in the Bank that he advised Mr. I.M. Rawal a counter clerk handling savings Bank ledger to transfer the balance lying in Account No. 1025 in the name of Shri Dharm Chand Nathaji from imperative savings bank ledger to that of operative ledgers *without first obtaining the permission of the Bank Manager which is a pre-requirement in all such cases*. After collecting the withdrawal form purported to have been signed by the depositor, handed over the same to
- h Mr. I.M. Rawal the counter clerk obtained token and after it was passed for

5. *Supra* Para 9

6. *Supra* Para 11 and 13

payment by the Branch Manager, obtained payment from paying cashier. When the payment after the withdrawal was passed for payment by the Branch Manager, it amounts to post-approval of inoperative account to be converted into an operative account. How can one pass a withdrawal for payment when it relates to an inoperative account converted into an operative account. This is a clear indication of an oral approval for such conversion which is subsequently converted into an operative account by ratification i.e., by passing the withdrawal for payment by Branch Manager.

Acquittal orders create a doubt in the public mind about the genuineness of department inquiries recording a finding of guilt. It has almost become a practice in banking institutions that subordinates are required to act and place the matter for consideration by Branch Manager, who is really responsible for overall activities of the Branch, and he is paid heavily and with many perquisites as well. One does not expect that such an official will simply pass a withdrawal without any kind of inquiry or scrutiny. To find a scapegoat, a clerk to be blamed for the total neglect of the Branch Manager in the discharge of duties at least makes out a case for a review of the departmental proceedings, particularly when there has been a judicial pronouncement of innocence.

The rule relating to domestic inquiries may need a suitable amendment in these terms:

"In all cases of concluded domestic inquiries, a subsequent acquittal order of the Court, if the authorities so think or deem fit and proper in the circumstances of a case, review the findings in domestic inquiries."

The rule relating to inoperative accounts converted into operative accounts, the Banking rule may be amended to provide for the following:

"... The passing of withdrawal for payment by the Branch Manager, shall be deemed to operate as an approval by him for inoperative accounts being converted into operative accounts."